

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

CHINA NATIONAL CHEMICAL
CONSTRUCTION CHONGQING Co., and
CHONGQING PESTICIDE
CHEMINDUSTRY (GROUP) CORP.,

Plaintiffs,

Civil No. 06-771-ST

v.

O R D E R

KIT KUNG,

Defendant.

HAGGERTY, Chief Judge:

Magistrate Judge Stewart issued a Findings and Recommendation [25] in this action recommending that defendant's Motion to Dismiss Plaintiffs' Complaint [6] should be granted on the basis that the court lacked personal jurisdiction. Objections [27] to portions of the Findings and Recommendation were filed by defendant, the successfully moving party in this action. The matter was then referred to this court for review.

The Magistrate Judge reviewed this case thoroughly in her Findings and Recommendation. The applicable standards, relevant facts and legal reasoning need be recited here only briefly.

Plaintiff alleged claims of fraud and unjust enrichment. Defendant moved to dismiss this action on four grounds, including an assertion that the court lacks *in personam* jurisdiction.

As the Findings and Recommendation recognized, "[a]bsent jurisdiction, this court cannot address the merits of this case." Findings and Recommendation at 6. Therefore, the Findings and Recommendation first reviewed defendant's argument that this court lacked personal jurisdiction over him. *Id.* In an extensive, well-reasoned analysis, the Magistrate Judge concluded that defendant's jurisdictional challenge was meritorious. Findings and Recommendation at 6-15.

There are no objections presented regarding this conclusion. When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation of the Magistrate. *Campbell v. United States District Court*, 501 F.2d 196 (9th Cir. 1974). No clear error appears on the face of the record, and this portion of the Findings and Recommendation is adopted.

Although this court lacks jurisdiction, the Findings and Recommendation went on to provide alternative recommendations regarding defendant's other arguments for dismissal. Defendant objects to the reasoning provided in that portion of the Findings and Recommendation.

When a party objects to any portion of the Magistrate's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate's report. 28 U.S.C. § 636(b)(1)(B); *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Defendant filed objections in a timely manner. The court has given the file of this case a *de novo* review, and has also carefully evaluated the Magistrate's Findings and Recommendations, defendant's objections, and the Record of the case.

This court's *de novo* review includes the fact that the Findings and Recommendation's conclusion that jurisdiction is lacking was proper and is adopted. In light of this lack of jurisdiction, defendant's objections to the Findings and Recommendation's "alternative" post-conclusion analysis are moot. Accordingly, those objections are overruled.

CONCLUSION

For the reasons provided above, defendant's objections [27] are OVERRULED. The Findings and Recommendation [25] is ADOPTED as follows: defendant's Motion to Dismiss Plaintiffs' Complaint [6] is granted on the basis of a lack of personal jurisdiction.

IT IS SO ORDERED.

Dated this 1st day of February, 2007.

/s/ Ancer L. Haggerty
Ancer L. Haggerty
United States District Judge